IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.147 OF 2006
WITH
CIVIL APPLICATION NO.190 OF 2006

Goldfilled Mercantile Company. ..Appellant.

V/s.

Maya Jamnadas Murlidhar Jaisingh
and Ors. ..Respondents.

Mr.Dinyar Madon with Vaibhav A.Sugdare i/b.
Kishore Thakordas & co. for appellant.

Mr.M.M.Vashi i/b M/s.M.P.Vashi & Associates for
respondents.

Mr.S.S.Purekar, 3rd Addl. Registrar, City Civil Court,
Guardian-Ad-litum present.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 28, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant material on record.

2. Admit.

3. Mr.M.M.Vashi waives notice for all respondent herein.

4. As short question is involved, appeal is taken up for hearing for final disposal by consent.

5. Appeal takes exception to the order passed by the City Civil Court dated 6th February, 2006 in Notice of Motion No.1609 of 2003 with Suit No.1099 of 2003. By this order the trial Judge has returned the plaint to the plaintiff with direction to value the suit properly after returning the plaint and present it before the appropriate court. On the basis of that order Notice of Motion for interim injunction filed has been disposed of.

6. Preliminary objection has been raised on behalf of the respondents that the present appeal from order is not maintainable. This objection proceeds on the premiss that the Trial Judge was called upon to consider the preliminary issue within the meaning of Section 9(8) of the Code and order passed on that issue is not appealable order. This argument is rightly countered by the counsel for the appellant relying on the operative order passed by the trial Judge which is impugned in this appeal. As is mentioned earlier, the order in fact is of return of plaint to the plaintiff with direction to value the suit properly and present before the appropriate court. That order is appealable under section 104 of the C.P.Code. Accordingly, preliminary objection will have to be overturned.

7. In so far as the merits of the contentions is concerned, it is seen from the plaint as filed before the trial Judge that the same is essentially suit for possession filed under provisions of section 6 of the Specific Relief Act. On fair reading of the plaint as a whole, there is little doubt that it is simplicitor suit for possession under section 6 of the Specific Relief Act. Even in concluding paragraph-34 of the suit, the plaintiff clearly mentioned that the suit has been filed under section 6 of the Specific Relief Act. Counsel appearing for the appellant/plaintiff also submitted across the bar on instruction that even if some other obligations are found in the plaint, the plaintiff will pursue the remedy only within the meaning of Section 6 of the Specific Relief Act. There is no reason to doubt the correctness of this position. Indeed, the counsel for the respondents brought to my notice prayer clause (b), which is according to him is outset the scope of section 6 of the Specific Relief Act. As is mentioned earlier the appellant/-plaintiff has conceded before this court which position is invoked substantially from the paragraph 23 of the suit that the plaintiff intended to pursue remedy only against section 2 in itself for said suit. The trial Judge will consider at the appropriate stage whether the other relief claimed in

the suit can be entertained in such proceedings.

Those questions are left open.

8. Suffice it to observe that the suit is filed under section 6 of the Specific Relief Act. The basis on which court below proceeded to answer the issue against the plaintiff cannot be countenanced. The trial court took the view that the suit is for possession on the basis of title. It is not the correct position, atleast cannot be supported from the form of the suit as presented by the appellants/plaintiffs. Viewed in this perspective, impugned Judgment will have to be set aside and the suit as well as notice of motion will have to be restored to the file of the trial court for being proceeded on its own merits in accordance with the law.

9. Counsel for the parties have rightly brought to my notice the order passed by this court on 12th December, 2005, wherein the trial Judge was directed to finally dispose of the Notice of Motion within eight weeks. In view of the developments, which have taken place in between, on account of which proceedings have been brought up to this court, the trial Judge is directed to dispose of the Notice of Motion which is restored to its file under this order

by 17th of April, 2006. Till the notice of Motion is finally disposed of, earlier order passed by this court directing the parties to maintain status quo with regard to the suit property will operate till modified by the trial Judge for reasons as may be warranted, or till disposal of the Notice of Motion.

10. Mr.S.S.Purekar, 3rd Addl. Registrar, City Civil Court appears as Guardian-Ad-Litem for respondent No.1.